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No. 79-116

In the Supreme Court of the United States

OCTOBER TERM, 1978

HALLEY I. THOMAS, PETITIONER

v.

WASHINGTON GAS LIGHT COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-2a) is unreported. The final opinion of the Department of Labor Benefits Review Board (Pet. App. 3a-8a) is reported at 9 BRBS 760. The Board's earlier opinion (Pet. App. 16a-19a) is unreported. The administrative law judge's original opinions (Pet. App. 34a-50a, 20a-32a) and his opinion on remand (Pet. App. 9a-13a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 27, 1979. The petition for a writ of certiorari was filed on July 24, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Full Faith and Credit Clause bars an award of workers' compensation in one jurisdiction following an award in another jurisdiction whose statute provides, only in general terms, that the benefits it confers are exclusive.

STATEMENT

Petitioner, a resident of the District of Columbia, was hired by respondent Washington Gas Light Company in the District of Columbia as a heavy laborer. Although petitioner occasionally worked in the Virginia and Maryland surburbs of the District of Columbia, approximately 60% of his duties were performed in the District (Pet. App. 36a-37a).

On January 22, 1971, petitioner sustained a disabling injury to his back while breaking concrete with an air hammer in Arlington, Virginia. He has been totally disabled ever since that time (Pet. App. 31a, 37a).[1]

Two weeks after the injury, petitioner executed a "Memorandum of Agreement as to Payment of Compensation" under which respondent agreed to pay him compensation of $62 per week for temporary total disability pursuant to Virginia law. The Industrial Commission of Virginia subsequently approved the agreement on March 15, 1971. Petitioner received these benefits until they reached the maximum amount payable under Virginia law (Pet. App. 45a, 49a). Petitioner is entitled to no further benefits—periodic compensation for continuing disability or medical treatment—under Virginia law.

[1]Less than a year after the injury, petitioner attempted to perform clerical work in one of respondent's offices. He was unable to do the necessary stooping and bending, however, and was forced to give up the job (Pet. App. 38a).

On September 24, 1974, petitioner notified the Deputy Commissioner of the Department of Labor's Office of Workers' Compensation Programs of his intention to apply for compensation under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§ 501-502. Petitioner's claim was determined by an administrative law judge, who rejected respondent's contention that the Full Faith and Credit Clause made the prior Virginia award *res judicata* and thus barred an additional claim under the District of Columbia Act (Pet. App. 44a). Accordingly, the administrative law judge awarded petitioner benefits for permanent total disability from the date of his injury (*id.* at 31a). The Benefits Review Board remanded the case for the receipt of additional evidence (*id.* at 18a). After further hearings, the administrative law judge issued a Supplemental Decision and Order reiterating his conclusion that the Full Faith and Credit Clause does not preclude a subsequent award under federal law and again granting petitioner permanent total disability benefits (*id.* at 13a). The Benefits Review Board unanimously affirmed that decision (*id.* at 8a).

The court of appeals reversed, placing sole reliance on its prior decision in *Pettus* v. *American Airlines, Inc.*, 587 F. 2d 627 (4th Cir. 1978), petition for cert. pending, No. 78-1739 (Pet. App. 2a).

DISCUSSION

The question presented in this case is whether the Full Faith and Credit Clause bars a workers' compensation award when the injured employee has received a prior award in a jurisdiction whose workers' compensation statute provides, in general terms, that the remedies that it

creates are exclusive. See Va. Code § 65.1-40 (1975). That question is identical to the central question presented in *Pettus* v. *American Airlines, Inc.*, No. 78-1739. The Director of the Office of Workers' Compensation Programs believes that the court of appeals erred in *Pettus* and has urged the Court to grant certiorari in that case. Should the Court decide to grant review in *Pettus*, its disposition would govern the outcome in the present case. We therefore suggest that the petition in this case be held pending the Court's disposition in *Pettus*.[2]

CONCLUSION

The petition for a writ of certiorari should be disposed of as appropriate in light of *Pettus* v. *American Airlines, Inc.*, petition for cert. pending, No. 78-1739.

Respectfully submitted.

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[2]The private respondents in *Pettus* have contended that the petition in that case was not timely filed. We disagree with that contention for the reasons stated in our *Pettus* brief (pages 6-7). If the Court were to conclude, however, that the *Pettus* petition was filed out of time, it should grant the petition in the present case to resolve the important question presented.

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